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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 190423389-9389-01]**

**RIN 0648-BI95**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management  
Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). The framework action is titled "Modification of Gulf of Mexico Red Grouper Annual Catch Limits and Annual Catch Targets." This proposed rule would reduce the red grouper commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). The purpose of this rule is to continue the Gulf red grouper commercial and recreational ACL

and ACT reductions implemented through emergency rulemaking in 2019 to protect the stock and to continue to achieve optimum yield (OY).

**DATES:** Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments on the proposed rule identified by "NOAA-NMFS-2019-0061" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0061](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0061), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address,

etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action-modification-gulf-mexico-red-grouper-annual-catch-limits-and-annual-catch>.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP, which includes red grouper, was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a

continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this proposed rule are in gutted weight.

## **Background**

The stock status of Gulf red grouper was last evaluated in 2015 through the Southeast Data Assessment Review (SEDAR) 42 stock assessment. The Council's Scientific and Statistical Committee (SSC) reviewed the assessment results and agreed with the assessment's determination that red grouper were not overfished or experiencing overfishing. At that time, the SSC recommended increases in the overfishing limit and the acceptable biological catch (ABC), which were the basis for the commercial and recreational ACLs and ACTs in place prior to the 2019 emergency rule.

Based on this assessment, the red grouper commercial and recreational ACLs and ACTs were implemented through a framework action to the FMP in 2016 (81 FR 70365, October 12, 2016). These values were based on a red grouper stock ACL equal to 10.70

million lb (4.85 million kg). The current sector allocation for red grouper is 76 percent commercial and 24 percent recreational, and the commercial and recreational ACTs reduce the sector-specific ACLs by 95 percent and 92 percent, respectively. Prior to the 2019 emergency rule, as of 2018, the red grouper commercial ACL in effect was 8,190,000 lb (3,714,922 kg) and the commercial ACT (commercial quota) was 7,780,000 lb (3,528,949 kg); while the red grouper recreational ACL in effect was 2,580,000 lb (1,170,268 kg) and the recreational ACT was 2,370,000 lb (1,075,014 kg).

At the October 2018 meeting, the Council requested that NMFS implement an emergency or interim rule to reduce the Gulf red grouper stock ACL for the 2019 fishing year to 4.60 million lb (2.09 million kg), or equal to the 2017 total red grouper landings level, whichever is less. The Council also began work on this red grouper framework action to reduce the red grouper catch limits beyond 2019. The Council took these actions based on recent information regarding the health of the stock. Since 2014, combined commercial and recreational Gulf red grouper landings have trended downwards from over 7.26 million lb (3.29 million kg) in 2014 to approximately 4.16 million lb (1.89 million kg) in 2017, an indication that the stock may be in

decline. The most recent red grouper stock assessment, SEDAR 61, will not be completed until later in 2019. Therefore, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an interim red grouper stock analysis to assist the SSC in developing harvest advice for 2019. This analysis suggested that the stock may be declining and supported recommending that the Council reduce the 2019 Gulf red grouper total ACL to 4.60 million lb (2.09 million kg). The Council received this advice at its meeting in October 2018.

In addition to the SSC's advice based on the interim analysis, the Council heard public testimony at the October 2018 meeting primarily from commercial fishermen. These fishermen expressed concern about the status of the red grouper stock, noting that red grouper are harder to catch than in previous years and that there appears to be a scarcity of legal-size and larger fish throughout the species' range on the west Florida shelf.

The Council also discussed the severe red tide conditions that occurred off the Florida west coast in the summer and fall of 2018, which may have adversely affected the red grouper stock. Although the impacts of this recent red tide are unknown, the 2009 SEDAR 12 update assessment indicated that a similar red

tide event in 2005 reduced the red grouper spawning stock biomass.

The 2017 combined red grouper commercial and recreational landings (approximately 4.16 million lb (1.89 million kg)) are less than the SSC recommended combined ACL of 4.60 million lb (2.09 million kg). Therefore, NMFS implemented an emergency rule (84 FR 22389, May 17, 2019) to reduce the red grouper commercial and recreational ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg). The emergency rule was effective on May 17, 2019, for 180 days (November 13, 2019), although NMFS may extend the emergency rule's effectiveness for a maximum of an additional 186 days. This allows for sufficient time for the Council and NMFS to develop and implement this rule to manage the red grouper stock for the 2020 fishing year and beyond. Without the measures in this current framework action being implemented to supersede the emergency rule's management measures, the sector ACLs and ACTs will increase and revert back to their values in place in 2018, thereby jeopardizing the red grouper stock health.

#### *Accountability measures*

The commercial sector is managed under an individual fishing quota (IFQ) program. The commercial red grouper quota

equals the commercial ACT, and is allocated to red grouper shareholders each year. The commercial IFQ program also serves as the accountability measure (AM) for the commercial sector.

The current recreational AMs specify that if the recreational ACL is reached or projected to be reached, red grouper fishing will be closed to the recreational sector for the remainder of the fishing year. If the ACL is exceeded in the following fishing year, the level of harvest will be set at the prior year's recreational ACT and the length of the recreational red grouper fishing season will be adjusted based on the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT. If the stock is overfished and an overage occurs, NMFS will reduce the recreational ACL by the amount of the ACL overage in the prior fishing year. The overage adjustment will also apply to the following year's recreational ACT.

#### **Management Measures Contained in this Proposed Rule**

For red grouper, this proposed rule would continue the red grouper ACLs and ACTs implemented by the emergency rule for the 2019 fishing year. Based on the framework action, the stock ACL would be 4.16 million lb (1.89 million kg), which is equal to the combined red grouper commercial and recreational landings.



Applying the commercial allocation of 76 percent to the stock ACL of 4.16 million lb (1.89 million kg) would continue the commercial ACL of 3.16 million lb (1.43 million kg) that was set in the emergency rule. The commercial ACT would be set at 95 percent of the commercial ACL, or 3.00 million lb (1.36 million kg).

For the recreational sector, 24 percent of the 4.16 million lb (1.89 million kg) proposed total stock ACL results in a recreational ACL of 1.00 million lb (0.45 million kg). The recreational ACT would be set at 92 percent of the recreational ACL, or 0.92 million lb (0.42 million kg).

The continuation of the ACLs and ACTs implemented through the emergency action and proposed in this rule are expected to benefit the stock. As described in the framework action, indicators suggest the stock may be in decline and that harvest levels need to be lowered. The actual stock condition is currently being evaluated through SEDAR 61 and the Council's SSC is expected to subsequently make an ABC recommendation. The reductions in ACLs and ACTs by this proposed rule are expected by the Council to lessen the impact of any possible future reductions in the ACLs and ACTs in response to the information and management advice (ABC) derived from SEDAR 61.

## **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the RFA, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the SUMMARY section of the preamble.

The rule concerns recreational and commercial fishing for red grouper in Federal waters of the Gulf. It directly affects both anglers (recreational fishers) and commercial fishing businesses that harvest red grouper in the Gulf exclusive economic zone (EEZ) and IFQ shareholders of the commercial red grouper annual quota.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests red grouper in the Gulf EEZ must have a valid Gulf reef fish permit attached to that vessel and the vessel permit must be linked to an IFQ account.

From 2013 through 2017, an annual average of 376 permitted vessels had IFQ landings of red grouper. An estimated 330 businesses own those vessels that land red grouper annually. All of these businesses operate in the commercial fishing industry (NAICS code 11411), but some also in related industries, such as fish and seafood merchant wholesalers (NAICS code 424460) and fish and seafood (retail) markets (NAICS code 445220). However,

all are expected to operate primarily in the commercial fishing industry.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. A preliminary examination of annual dockside revenues of vessels owned by the above businesses indicates the total annual revenue of each business to be less than \$11 million. Consequently, all of the businesses directly affected by the proposed action are identified as small.

An emergency rule reduced both the red grouper commercial ACL and commercial ACT in 2019. This rule would reduce both the red grouper commercial ACL and commercial ACT beyond 2019: the ACL from 8.19 million lb (3.71 million kg) to 3.16 million lb (1.43 million kg), and the ACT (quota) from 7.78 million lb (3.53 million kg) to 3.00 million lb (1.36 million kg). That is a quota reduction of 4.78 million lb (2.17 million kg), which is

a 61.44 percent decrease.

The maximum loss of commercial landings would be 4.78 million lb (2.17 million kg). At an average dockside price of \$4.11 per lb, the maximum annual loss of total revenue would be approximately \$19.65 million (2018 \$). However, annual commercial landings of red grouper have been less than the quota and declining.

From 2013 through 2017, average annual landings totaled 4.56 million lb (2.07 million kg). If future annual landings are consistent with that average, this rule would reduce commercial landings by 1,564,953 lb (709,851 kg) and associated dockside revenue by approximately \$6.43 million, a 34.3 percent decrease. The average loss for each of the 330 small businesses would be \$19,491 (2018 \$), and for each of the 376 vessels, \$17,106. However, not all vessels or small businesses are the same. From 2013 through 2017, vessels that used bottom longline gear had 65.5 percent of the red grouper landings, those with bandit gear had 21.5 percent, hand hook-and-line 11.0 percent, and other gears 2.0 percent. If those percentages apply in the future, the average vessel would experience a loss of total annual revenue ranging from 7.3 percent to 28.0 percent, depending on the gear used. Those percentages presume the average dockside price of

red grouper stays at the 2018 level of \$4.11; however, the decrease in supply is expected to raise that price, which would reduce the adverse economic impact.

Nonetheless, NMFS concludes that this rule would have a significant economic impact on the average annual 330 commercial fishing businesses and their combined 376 federally permitted fishing vessels that harvest red grouper from the Gulf of Mexico.

Two alternatives were considered but not selected by the Council. The first alternative, the status quo, would keep the commercial quota at its current level and would have no impact on small businesses. However, it would be expected to have the greatest adverse long-term impact. The second alternative would have a smaller adverse economic impact than the selected action because the reduction of the quota is less: 3.32 million lb (1.51 million kg) versus 3.16 million lb (1.43 million kg). However, that second non-selected alternative could generate a smaller long-term benefit than the selected alternative.

#### **List of Subjects in 50 CFR Part 622**

Commercial, Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: July 15, 2019.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Amend § 622.39 by:

- a. Lifting the suspension on paragraph (a)(1)(iii)(C);
- b. Revising paragraph (a)(1)(iii)(C); and
- c. Removing paragraph (a)(1)(iii)(D).

The revision reads as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) *Red grouper*—3.00 million lb (1.36 million kg)

\* \* \* \* \*

3. Amend § 622.41 by:

a. Lifting the suspension on paragraph (e);

b. Revising paragraph (e); and

c. Removing paragraph (r).

The revision reads as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

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(e) *Red grouper*—(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The commercial ACT for red grouper is equal to the applicable quota specified in § 622.39(a)(1)(iii)(C). The applicable commercial ACL for red grouper, in gutted weight, is 3.16 million lb (1.43 million kg).

(2) *Recreational sector*. (i) Without regard to overfished



status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (e)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (e)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition,

the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (e)(2)(i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (e)(2)(ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.00 million lb (0.45 million kg). The recreational ACT for red grouper, in gutted weight, is 0.92 million lb (0.42 million kg)

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